

STATE OF VERMONT

SUPERIOR COURT, WINDSOR COUNTY

S379-96-WrC

Gozenbach, Dawn *

v.

Perry, Joseph **

ENTRY REGARDING MOTION

Title of Motion: MOTION FOR JUDGMENT ON THE PLEADINGS

Date Filed: December 31, 1996

Party Filing: Defendant William Bacon

Dates Response Filed: 1/6/97; 1/10/97; 1/21/97; 1/30/97 and 2/5/97

_____ Granted Compliance by _____

X Denied

_____ Scheduled for hearing on _____ at _____

X Other: Pleadings are now closed, and personal service was completed within the enlarged time permitted by the court. The court declines to reverse its order extending time for personal service. Good cause for excusable neglect was found on the following basis: Plaintiff made reasonable efforts, commencing in a timely manner and continuing on an ongoing and prompt basis, to effect service, and do so within the policy of the Rules to give Defendant an opportunity to minimize costs; the Defendant's employer had full notice of the claim within the statute of limitations period, and his attorney has filed an answer before the answer period expired; the purpose of personal service is to make sure the Defendant has notice in a timely manner, and this was fully accomplished within the statute of limitations period; the change in the Rules procedure and forms with respect to service on the Commissioner created some lack of clarity, but Plaintiff made full effort at compliance and to correct defects; inadequate service, if any, was not due to a tactical decision or an improper use of the rules but a reasonable belief that service on the Commissioner had been done properly and that reasonable arrangements for service had been made

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WINDSOR COUNTY CLERK

th Defendant's attorney through the granting of an extension of time to
swer; Defendant's attorney may have been less than candid in seeking an
extension of time to answer but not notifying Plaintiff's attorney that
Defendant would not agree to waive personal service and would challenge other
forms of service; and given that Defendant had filed a substantial answer
prior to the expiration of the agreed-upon extended deadline, the case should
be decided on its merits and not on the application of procedural rules.

Mary Miles Teachout

MARY MILES TEACHOUT
PRESIDING JUDGE

April 3, 1997

DATE

cc: D. Patrick Winburn, Esq.
Harold E. Eaton, Jr., Esq.
Michael J. Gannon, Esq.

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